

In re: RAYMOND E. VAN LUVENDER III, Debtor

**CASE NO: 08-21022-PGH**

Debtor filed an Application for Waiver of the Chapter 7 Filing Fee (“Application”), which was granted by the Court. The Trustee subsequently filed a Motion to Vacate Order Granting Application to Waive Chapter 7 Filing Fee (“Motion to Vacate”). The Debtor had a family of five, total monthly expenses of \$1,930.00, and total combined net monthly income of \$1,643.00. The Trustee contended that because the Debtor had a total of \$901.19 in bank accounts, received \$2,414.01 from a tax return, and paid \$200.00 to a petition preparer, the Debtor was not eligible for a fee waiver. The Trustee urged the Court to consider the Debtor’s exempt assets when determining whether waiver of the filing fee was warranted. The Court found that the Debtor satisfied the applicable two-prong test under 28 U.S.C. § 1930(f)(1). First, the Debtor’s income was less than 150% of the income official poverty line. Second, given the totality of the circumstances, the Court concluded that the Debtor established that his inability to pay the filing fee in installments. The Court held that exempt assets may be considered for purposes of the totality of the circumstances analysis under the second prong of § 1930(f)(1). However, the Court concluded that the Debtor’s liquid exempt asset of \$901.19 was negligible based on the Debtor’s negative monthly income and the Debtor’s illiquid asset -equity of \$557.00 in an automobile - was minimal. The Court denied the Trustee’s Motion to Vacate.